STATEMENT OF

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on behalf of

THE NATIONAL LEAGUE OF CITIES

before the

COMMERCE COMMITTEE

SUBCOMMITTEES ON HEALTH AND ENVIRONMENT

and

OVERSIGHT AND INVESTIGATIONS

UNITED STATES HOUSE OF REPRESENTATIVES

on

PROPOSED NEW CLEAN AIR ACT STANDARDS

MAY 1, 1997

NATIONAL LEAGUE OF CITIES

Summary Statement
Testimony on Proposed Changes to Clean Air Act Standards

NLC believes Congress should delay implementation of the Environmental Protection Agency's proposed changes to the Clean Air Act standards for ozone and fine particles.

Municipal elected officials represented by NLC are concerned that the proposed revisions will adversely affect the credibility of Clean Air Act requirements with respect to:

- ⇒ continued public support for implementation of controls to attain current standards; and
- ⇒ the adequacy of the science on which the new requirements are based;

City officials are also concerned about:

- ⇒ the impacts of conflicting requirements among environmental statutes that in effect preclude compliance with one set of mandates in order to attain the requirements of another;
- ⇒ unrealistic and unattainable environmental objectives; and
- ⇒ the intervention of the judiciary in forcing actions before the necessary structure and science to justify such actions have been completed.

Accordingly, NLC urges that:

- ⇒ Congress overturn the Court's deadline in order to assure both EPA and the scientific community have adequate time to draw sound conclusions about further reductions in air emissions;
- ⇒ Congress fully fund the mandates it imposes on the Agency, such as the requirement to review the National Ambient Air Quality Standards every five years;
- ⇒ EPA provide either more and better science or more and better explanations that the existing science is valid;
- ⇒ EPA assess the effects of implementation of new requirements in recently approved State Implementation Plans before imposing further reductions in air emissions; and
- ⇒ EPA develop and provide better information about the pervasiveness of $PM_{2.5}$ before finalizing new standards and substantially expanding the number of areas out of compliance.

Statement of Councilmember Trixie Johnson before the Commerce Committee, May 1, 1997

Mr. Chairman, members of the Subcommittees: I am Trixie Johnson, Councilmember from San Jose and vice chair of the National League of Cities Energy, Environment and Natural Resources Committee. I am here today to testify on behalf of NLC and the 16,000 cities and towns across the nation we represent on EPA's proposed new standards for ozone and particulate matter. I would like to ask if I may submit, for the record, a copy of NLC's resolution on the proposed changes to the National Ambient Air Quality Standards adopted last December at our annual meeting.

Municipal elected officials support federal initiatives designed to protect public health and the environment. NLC was an active and supportive participant in the debate on, and enactment of, the 1990 Clean Air Act Amendments. As local elected officials we care about our communities and the people – including our own families – who live there. We are not solely discussing economic development and attracting industry and jobs. None of us want to be out of compliance with federal standards. We want to be able to assure our citizens that the air they breathe, the water they drink, and the rivers, lakes and streams in which they play, meet the highest and safest possible public health standards. And, local governments are willing to make every effort possible to obtain the necessary resources to achieve these objectives. We, as local elected officials, can bring little to the smog and soot debate as scientists or epidemiologists. So while we cannot challenge with impeccable credentials the adequacy of the science on which these proposed new standards are based, we do believe we have the appropriate standing to raise significant concerns about the process by which they were developed and are being proposed, as well

as the potential for imposing exceedingly costly new federal mandates on the citizens of this country that may yield few, if any, benefits.

From the municipal perspective, there are four areas of concern:

- credibility as to
  - the current air quality standards, and
  - the adequacy of the science on which requirements are based;
  - continued public financial support for Clean Air Act initiatives,
- inconsistency among statutes that have overlapping impacts;
- unattainable objectives; and,
- a process – or lack of one – that fosters unhelpful judicial interventions.

Credibility

. . . Current NAAQS

Many of the State Implementation Plans developed as a result of the 1990 Clean Air Act Amendments are just now being implemented. The implementation strategies incorporated in these plans have not been in effect long enough to determine their impact. We need answers to questions about the validity and impacts of the requirements now imposed on our states, local governments, and businesses if yet another set of requirements will overlay the existing ones. The implication – at least for the uninitiated – is that what is currently being required is meaningless or futile. If significant additional resources are to be committed to further reductions in pollutants, there must also be adequate assurances that these investments will yield (at a minimum) commensurate, or (at a maximum) appreciable health benefits .

We are also troubled by the absence of adequate and basic information with respect to $PM_{2.5}$. It would seem appropriate to us that before issuing a new set of requirements, it might be helpful to know where it is a problem, the pervasiveness of the problem and, whether it is the pollutant or a subset of the pollutant that is the cause of the problem.

. . . Science

It is clear from recent reporting, and from testimony given at your recent hearings, that there is significant disagreement about the adequacy of the science on which the proposed new standards are based. While we might agree with Administrator Browner that demonstrable "cause and effect" justifies action, the very existence of the scientific controversy raises questions in our minds about whether the "cause and effect" are indeed sufficiently certain to justify action. We find it inexplicable that as the nation's air quality improves, the incidence and/or severity of asthma increases. Logic would indicate it should be the reverse. We are concerned that we may be moving toward requirements to regulate naturally occurring phenomena, such as wind-borne sand from beaches and deserts, or pollen from natural vegetation.

. . . Public Support

With respect to continued public support, many municipalities have made Herculean efforts to come into compliance with the National Ambient Air Quality Standards. To learn now that instead of some recognition of accomplishment, these efforts were inadequate, inappropriate, or ineffective is dismaying.

As you well know, many states and even more local governments face voter imposed constraints on our ability to raise revenues. Sooner or later our constituents will object to financing the implementation of federal mandates designed to accomplish specific objectives if, after the fact, these investments prove to be futile. It is not just our credibility that is at stake; the federal government has a similar interest in assuring the wise use of our limited resources.

Inconsistency

Congress was responsive to NLC's concerns about the inconsistencies between requirements in the Clean Air Act (required reductions in vehicle miles traveled [VMTs]) and provisions in the highway legislation in effect at the time which allocated resources based on increases in VMTs. In developing and enacting the Intermodal Surface Transportation Efficiency Act (ISTEA), these conflicting objectives were addressed. Now we are faced with an administration seeking to impose more stringent controls on emissions causing air pollution – many of which are generated by stop/go rush hour traffic – while simultaneously proposing significant cuts in transit funding which provides a virtually guaranteed method for reducing the proximate cause of these self-same pollutants! Equally seriously, many in Congress are proposing changes to ISTEA which would remove the Congestion Mitigation Air Quality program. That is but one inconsistency.

Another example: the nation's larger municipalities – and soon the preponderance of all other cities, towns and counties – are, or will be, required to comply with stormwater management measures to prevent, eliminate or reduce pollutants in

urban run-off. One method to accomplish this objective is street sweeping. Will clean air requirements prevent municipalities from implementing such activities because street sweeping raises air-borne dust, thus reducing their ability to meet the federal stormwater mandate?

Unattainable Objectives

One of our major concerns is the increasing intrusion of the federal government into decisions with respect to local land use planning, and the distinctly anti-growth bias of many federal environmental mandates. Less than ten percent of the land area of this nation is urbanized; our population is growing at a reasonable pace of about one percent per year. If we can neither build housing, office space, industrial facilities in undeveloped areas, nor restore or rehabilitate such facilities in developed areas, how do we accommodate our growing population? Environmental mandates are not, nor should they be, the means for determining national growth policy. If we, as a nation, are ready to abandon the restoration and revitalization of our cities, or to control population growth, that should be attained openly and honestly.

Municipal officials are also concerned about being required to comply with federal standards when there are few or no tools available to attain such compliance, or when there is no body of knowledge about how to achieve compliance. This committee addressed many of these concerns in the 1990 Clean Air Act Amendments by creating classes of non-attainment based on the severity of the air pollution problem, alternative requirements based on the degree of pollution, and varying time frames for attaining compliance based on the complexity of the problems being addressed.

Nonattainment designations based on severity of the air quality problem, however, apply only to ozone, not to particulate matter. Given the significant unknowns (where, how much, from what sources) with respect to $PM_{2.5}$, we are concerned about deadlines and the consequences of failure to meet them in however many areas may be out of compliance.

Despite Administrator Browner's assurances in her recent testimony before the Senate Environment and Public Works Committee that 70% of the potential nonattainment areas can come into compliance with the proposed new standards by using existing technology and strategies, we question the validity of this assumption and furthermore, are concerned about the remaining 30%.

Judicial Intervention

As public officials, I must say we find it peculiar that, more often than not, EPA complies with its legal deadlines, obligations and requirements only in response to law suits and court orders. In some respects, we empathize with EPA; they too must deal with "unfunded federal mandates." However, we too have inadequate resources to accomplish all that is required of us. I cannot imagine a circumstance in which a municipality could simply ignore a legislated requirement for almost 20 years without consequence.

Court driven decisions, with unrealistic deadlines, on complex environmental issues are not helpful. It is incredibly frustrating to read the Clean Air Science Advisory Committee's letter with respect to $PM_{2.5}$ which says, *". . . the deadlines did not allow adequate time to analyze, integrate, interpret, and debate the available data on a very*

complex issue." (see CASAC letter to Administrator Browner dated June 13, 1996, page 3).

Recommendations

First, we do not believe the courts should be permitted to force decisions on complex scientific matters. At a minimum, Congress should overturn the court's deadline giving EPA and the scientific community adequate time to draw sound scientific conclusion about further reductions in air emissions.

Second, EPA should be required to obey the laws applicable to the agency just like everyone else. But, Congress must also assure they have the resources to do so. If the Clean Air Act requires EPA to review air pollution standards every five years, the funding to comply with this requirement should be provided. If these funds are unavailable – because of limited federal resources or alternative national priorities – then this requirement should be changed accordingly.

Third, if indeed, as Administrator Browner indicated in recent hearings, over 200 scientific studies support the need for tighter controls on specific air emissions, then EPA has done a poor job of publicizing, explaining or demonstrating the adequacy of the scientific basis for their proposals. No one expects unanimity on complex science, but the American people need far better assurances than they have now that the scientific basis for these proposals is sound. We either need more and better science, or more and better explanations that the science that exists is valid.

Fourth, before moving forward with ever more stringent requirements, the impact of implementing new requirements in the State implementation plans that have only

recently been approved needs to be assessed. No new standards should be imposed until such assessment has occurred.

And finally, we need better information about the pervasiveness of $PM_{2.5}$ before proposals are finalized. How many $PM_{2.5}$ non-attainment areas are there; where are they located; and how significant is the problem in these areas. It is difficult to accept that a problem exists if there is little information about where it exists.

Mr. Chairman, members of the Committee; thank you for the opportunity to testify on this important issue to the nation's cities and towns. I would be happy to answer any questions I can.